

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **VICE CHAIRMAN MIKE SPRAGUE**, on January 14,
2003 at 9:01 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddie McClure, Legislative Branch

Please Note:

Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 101, 12/20/2002
Executive Action: SB 28; 36

{Tape: 1; Side: A}

HEARING ON SB 101

Sponsor: SENATOR DALE MAHLUM, SD 35, Missoula

Proponents: Jeffrey Tiberi, Montana Heritage Commission; Mark Simonich, Department of Commerce; Pat Keim, Montana Heritage Commission.

Opponents: Arnie Olsen, Montana Historical Society; Bob Morgan, Montana Historical Society.

Informational Witnesses: Nancy Butler, Montana State Fund; Rosana Skelton, Montana Heritage Commission.

Opening Statement by Sponsor:

SEN. MAHLUM brought SB 101 before the committee and said it is a bill that is an act allowing the Montana Heritage Preservation and Development Commission to use the services of volunteers to require work comp coverage for volunteers and authorize reimbursement of certain compensation coverage for the volunteers. It authorizes the commission to sell real and personal property. At this time, the commission can buy real property but can't sell it. It authorizes the commission to establish a trust fund in order to receive interest from that money rather than having the money go to the general fund. **SEN. MAHLUM** spoke of the large debt taken on to make Virginia City and Nevada City look good. He said they received \$1M in federal money two years ago and they want to put federal money into the Montana Heritage account. In the last few years, Montana has suffered from a recession, fires, drought, and now a budget crunch; but we have some bright spots in our state and one of them is Virginia City. The state of Montana owns 248 old buildings in Virginia City and Nevada City. We have over 1M artifacts that the citizens of Montana own. It's the largest collection of gold rush era buildings in America and the largest collection of western Americana outside of the Smithsonian Institute. The Montana Heritage Commission has made great strides in caring for these resources. Work has been accomplished on nearly 100 buildings and thousands of artifacts. The commission has averaged a 20 percent increase in earned revenue for each of the five years they have been managing the sites. They have a commission appointed by the Senate and the House with the remaining members appointed by the Governor. These people work really hard. Economic activity is measured by the resort tax collection, which has averaged more than \$2M per year, and it is growing. He explained that they have national and international recognition equal to about \$3M in advertising.

It includes the PBS series, "The Frontier House," articles in national publications as well as recognition of the project by *The New York Times* as one of the nation's most ambitious preservation projects. The Montana Supreme Court called Virginia City priceless. **SEN. MAHLUM** said they want to run this operation like a business, which is what they were charged to do. However, they are somewhat hampered. They want to collect interest on any federal dollars they secure. The commission goes out and solicits money, not the state. They want to do this by allowing the deposit of federal dollars into the commission's account. If they receive a grant and get some of the money up front, and if the feds say it's applicable, they want to keep that interest on it. They want to clarify that they can seek dollars from the federal government and want it added to their concept of how Virginia City will be managed. Volunteers provide a much-needed labor source. Those volunteers provide thousands of hours of work and the commission wants them to be protected. Consequently, they want to clarify their ability to use volunteers. At the request of the state auditor's office, the commission needs to clarify their ability to sell property that has no use to the project. The commission has given the director of the Historical Society a stronger role; but, an amendment needs to be included with SB 101 to clarify the commission's ability to sell some of the property. There are now two government appointed boards responsible for managing the assets. This transfer will allow for the assets to be placed under the management of the Montana Heritage Commission, which will help reduce duplication and eliminate some of the confusion that has occurred between the commission and the society's board of trustees. Some of the biggest confusion centers on the trustees' museum-based mission to keep things as they are and the legislature's intent that this be run as a business and that they make money. **SEN. MAHLUM** distributed the proposed amendments to the bill, **EXHIBIT (bus07a01)** (SB010101.aem).

Proponents' Testimony:

Jeff Tiberi, Executive Director, Montana Heritage Commission, showed a PowerPoint presentation on Virginia City and the work of the commission.

{Tape: 1; Side: B}

Mr. Tiberi closed by saying that the buildings are real buildings and not Disney; so when you walk through the town, there is an air of authenticity that people appreciate in the modern day world where a lot of the things we see are not real. It's a place of stories. All of the stories are there, and it's a lot of opportunity for the state of Montana. Most of all, Virginia

City is a place of potential. It can be a world class destination, but it's going to take a lot of hard work. But, we can get there. He expressed his feeling that the legislature took a gamble back in 1997 by acquiring these properties, but it was ultimately the right thing to do for the state of Montana to protect these resources. He provided written testimony, **EXHIBIT (bus07a02)** and testimony regarding safeguards to protect the public trust assuming a transfer of property to the Montana Heritage Commission, **EXHIBIT (bus07a03)**.

Mark Simonich, Director of the Department of Commerce and member of the Montana Heritage Commission, shared with the committee that two years ago, the statute was amended to add a couple of additional members to the commission. One of those became the Director of the Department of Commerce under statute. Knowledge **Mr. Simonich** has derived from ten years of involvement with 50 different boards that have been attached to agencies with which he has been involved (citizen boards dedicated to their work for the state of Montana) shows that the Heritage Commission ranks right up there with all of those boards and commissions. He said if other commission members and volunteers were at the hearing to tell the story, the committee would hear of people that are actively involved in helping revive that train in Virginia City, of commissioners who are working with citizens in their communities throughout the state and nation to encourage private donations to Virginia City. The amendments that are proposed today within SB 101 are amendments to statute that will clarify and give stronger authority to the commission to actually be able to manage the assets and resources the state acquired from Mr. Bovey's estate. The situation currently is a little bit difficult where the assets are held in the name of the Historical Society and yet the commission is charged with managing the resources down there. The two parties work together as well as they can, but we've managed to create two different governing bodies that don't always have the same purpose of mind when making decisions. The members of the commission are dedicated, not only to the preservation, but to the enhancement and promotion of Virginia and Nevada City. They work strongly with the individuals in those communities to benefit the communities, and he certainly urges support for this legislation.

Pat Keim, Montana Heritage Commission member, said this legislation will help the commission and its staff in several ways. It will help them properly manage the facility and meet the original intent of the people of Montana. The bill also addresses the use of volunteers, which are such an important part of the project. This provision will make it much easier to secure volunteer help and stretch the labor dollar that is very stretched already. It can also take the visions that are

designed to give management the ability to manage the place and to manage it in a businesslike manner while preserving the history of the place. There are certain inhibitions in the current law that this bill addresses and that will help facilitate the management. With this bill, the staff and commission can have the ability and resources to focus the resources to achieve those objectives as outlined by the legislature.

Opponents' Testimony:

Arnold Olsen, Director of the Montana Historical Society, presented written testimony, **EXHIBIT (bus07a04)**.

Bob Morgan, Board member of the Montana Historical Society, said he has been associated with the Historical Society since 1952. He worked there as curator, antique director and a myriad of other jobs. He discussed his family's history in Montana dating back to 1860 along with his relationship with Charles Bovey. He said our job is to protect. Over the years, the Historical Society has had a tough time, but they managed to get the job done. It's one of their jobs to see that the artifacts or history or heritage is preserved and not to sell objects simply for the sake of selling. He begged the committee to allow history to belong to the historians and let the business end of it belong to the business people.

Questions from Committee Members and Responses:

SEN. KITZENBERG asked **SEN. MAHLUM** to help him understand the bill and asked if this bill gives the commission the opportunity to sell property and artifacts or just property. If it's artifacts, how would the commission determine which artifacts would be sold.

SEN. MAHLUM explained that the bill states the commission can now only buy property; they cannot sell. He went on to explain that the commission would go to the Montana Historical Society and ask if they can sell, for example, 40 pairs of 85 pairs of old shoes. There are boxes and boxes of old items at Virginia City. Land holdings consist of a variety of spots. There are people who are waiting to see if this legislation passes to decide if they are going to give their adjoining property to the Montana Heritage Commission for the tax benefit. **SEN. KITZENBERG** wanted to know what safeguards are in place that would protect certain valuable artifacts. **SEN. MAHLUM** stated the sale would have to go through the Montana Heritage Commission, then it has to go to the Montana Historical Society. Something that was not mentioned earlier was the discovery in an old railroad car in Virginia City of a barrel vault. Some were reproduced in Philadelphia to make a new barrel vault.

SEN. COCCHIARELLA questioned whether or not the amendments submitted by **Mr. Olsen** had been reviewed. **Mr. Tiberi** replied that he had received the amendments and his replies are found in Exhibit 3.

{Tape: 2; Side: A}

Mr. Tiberi addressed **Mr. Olsen's** mention of the National Museum policy. He said that we are not in a National Museum setting. The way the Heritage Commission was set up by the 55th Legislature was to protect these resources and make money. To do that successfully, the commission has to have some freedom to get real and personal properties off of their hands. Right now, they are liabilities for the state of Montana. The Land Board has to give their approval before any land can be sold.

SEN. COCCHIARELLA thought a middle ground could be met and was concerned about indiscriminate selling of property due to her previous dealings with the attorney for the Bovey estate. She asked where the common ground is and for a way to get there.

Mr. Tiberi stated they have changed their enabling statute to allow an increased role for the Historical Society in sales. He referred to Exhibit 3.

SEN. ANDERSON had several different questions. He said it appears there is a revenue problem. He asked where the commission is at with their charge in running this as a business and asked for gross revenues. **Mr. Tiberi** shared that his annual revenues have increased an average of 20.7 percent per year since the state took over. Last year, they increased by 15.4 percent. Last year, they made \$320K earned revenue on sight. As far as liabilities, rough calculations show \$10M to \$20M if you wanted to restore every one of the buildings. However, the commission knows they can't do that. So they're taking their money and protecting roofs and foundations as well as seeking money for other problems. He stated there is a big disparity there. Last year, the commission's budget was \$1.2M. **Mr. Tiberi** also explained that federal grants are not included in the total. They were not spending in the deficit last year. The federal grants made up the difference.

Nancy Butler, Montana State Fund, said the State Fund provides coverage for the Montana Heritage Commission through the policy for the Montana Historical Society. They would look at the type of work volunteers are doing, which is maintenance, preservation and construction. The State Fund has special codes of use for a state entity and would probably use the state "All Other" code, which costs \$4.50 per hundred of payroll.

SEN. ANDERSON questioned **Mr. Tiberi** about the value of artifacts. He asked if it is true that sometimes people will donate something that has absolutely no value to what is trying to be done in Virginia City. **Mr. Tiberi** said that if the items don't pertain to the mission or fit in with the setting, then they are turned down. It's a difficult thing to do, because people are sensitive and they may think a dress or tool is special, but it doesn't fit with the project. He continued on to say that the commission has accepted some things of great value; for example, the locomotive, which is worth about \$800K. **SEN. ANDERSON** inquired about the instance where someone donates an item and then the commission has to hold it for two years and can then liquidate it. **Mr. Tiberi** replied that he is not familiar with that law. He said things they've accepted, they have taken title, but have not ever made commitments to people on how long they would keep them. He deferred to **Mr. Olsen**, who told the committee that there is no set rule on that issue; it depends on the condition of the item. Sometimes there are tax implications for the donor and the matter of how much time the item is held. In his experience in the society, most people who donate things do it because they want the item protected, kept and exhibited.

SEN. RYAN asked **Mr. Tiberi** about the work comp issue and how volunteers are being covered on the job now. **Mr. Tiberi** stated that they are covered right now through the Historical Society; this bill puts it in statute.

SEN. MAHLUM was asked by **SEN. RYAN** if, when the state purchased the Bovey collection, they were allowed to pick what they wanted or did they have to buy in total. **SEN. MAHLUM** answered that they bought the whole lot, just as in an auction and you buy a box, you get everything. **SEN. RYAN** inquired if the commission wants to sell individual items such as shoes or sugar and creamer sets as historical mementos of Virginia City. **SEN. MAHLUM** said that is what they want to do with little things; however, with bigger things such as real property, they have to go through the State Land Board. When they do sell artifacts, the proceeds won't go into ongoing daily expenses. That money will go into a trust to allow them to use the interest to fix buildings or other projects. **SEN. RYAN** commented on his behind-the-scenes tour taken after the last legislative session and said he wanted the committee to know that this is work that Montana has to allow to go forward.

SEN. GEBHARDT had a question about the sale of some of the dilapidated buildings and real property. Allowing for everything the commission has done to make Virginia City the attraction, what would prevent someone from coming in and starting a tourist-related business that would compete with it. **Mr. Tiberi** stated

that Virginia City has the strictest design-review ordinances in the state of Montana. There is a case before the Supreme Court now where the city has taken a builder all of the way through District Court because a building was not appropriate. These design-review ordinances controls, especially the historic district on Wallace Street, would prevent that from happening. Anyone who would buy one of the commission's outlying properties would have to go through the city to do so.

SEN. ROUSH asked **Mr. Olsen** about his amendment recommendations, No. 7 on the first amendment, last three lines: No personal property may be sold until an adequate inventory of all personal property is completed to evaluate the interpretive and monetary value of the property. **SEN. ROUSH** wanted to know how long a time we were talking about. **Mr. Olsen** stated the intent there is not to use it as a mechanism to keep progress from happening. He said they look at it as a common sense provision and that until you know what you have and what it's worth historically and monetarily, you shouldn't be selling it. There may be an opportunity to segment the resources that are there; for example, the carriages, which are larger items are easier to inventory. If you had **Mr. Tiberi** show an example of a carriage in Glacier Park that may have nothing to do with Virginia City, maybe that's an item that would fall into that category. You would have to know all of the carriages they have and how significant they might be, both to the state of Montana and to Virginia City before you make that judgment. He didn't think you need to look at every button and screw before you do that. You may take the furniture or the music machines, those things that are larger to start with. But the smaller items do take a long time and you at least have to have some idea of what you have historically and monetarily before you can even know if you're getting a fair price. **SEN. ROUSH** wanted to know if **Mr. Olsen** believes that the Heritage Commission has an adequate inventory and did he believe that they've been able to put a monetary value on their property. **Mr. Olsen** answered that he did not believe so at this point.

SEN. SPRAGUE had a question for **Mr. Morgan** about letting new committee members know what Mr. Bovey was like. **SEN. SPRAGUE'S** view was that Mr. Bovey was an opportunist. **Mr. Morgan** answered that he was, to a degree; but, after awhile, the opportunity was not there and Mr. Bovey could see that. He spent millions of dollars there knowing he would never make a dime. **Mr. Morgan** continued that he got so engrossed in the history, that he would move buildings for miles to put them in Nevada City. He said there has been talk of 40 to 60 boxes of shoes. Mr. Bovey's dream was that he could outfit a complete general store with all of the sizes and everything else. It was his goal. If Mr. Bovey made a nickel, he put it right back in Virginia City or Nevada

City. **SEN. SPRAGUE** asked if Mr. Bovey knew what he was going to do with the things he bought, some of which were used in the refurbishing of the capitol building. **Mr. Morgan** replied that was right and that Mr. Bovey felt that they should be saved and referred to fireplace fronts taken out of offices in the capitol and were sitting in the hallway. **Mr. Morgan** saw people back pickup trucks to the capitol doors and take them. **Mr. Morgan** was able to get four for the Historical Society that way. He said Charlie Bovey felt these things should be kept at Virginia City knowing full well that someday somebody would say we should restore this capitol the way it was. **SEN. SPRAGUE** asked **Mr. Morgan** if Mr. Bovey did not also take those excesses, as time went on, and have to dispense of or sell some of them. **Mr. Morgan** replied that there were very few. He said you never talked to Charlie Bovey about buying an artifact for Charlie Bovey. To **Mr. Morgan's** knowledge, Mr. Bovey never did sell anything. **SEN. SPRAGUE** remarked that, toward the end, Mr. Bovey was going to sell one way or the other ... either to the state of Montana or on the auction block. **Mr. Morgan** disagreed and said the Disney Corporation was sitting back there all of the time. If the state didn't take it, they were going to take it.

SEN. RYAN requested that **Rosana Skelton** be called as an informational witness and remarked that she is the current chairperson of the Montana Heritage Commission.

{Tape: 2; Side: B}

Ms. Skelton said she has been on the commission since its inception. In response to **SEN. RYAN'S** question regarding the make-up of the board, **Ms. Skelton** replied that most of them are stipulated in statute and there are three directors of agency, Commerce; Fish, Wildlife and Parks; and the Historical Society. There has to be a professional historian type of person. She was appointed due to her business background along with a member from West Yellowstone. She said they have a banker from Ennis, a former legislator, one senator and one representative on the commission. **SEN. RYAN** pointed out there is a reference to potentially moving the location of the commission's operations. **Ms. Skelton** stated it made logical sense to attach the commission to the Historical Society because of the historical nature of the project. It has become increasingly clear to everyone that just the sheer size of this project has a capacity to swamp a small agency as the Historical Society. The audit that is in the process of being done now is showing there are a lot of things that could benefit this project that perhaps another agency could do as well or better. For the Historical Society, being one of the smallest agencies, taking on a project such as this one tends to overwhelm their resources.

SEN. KITZENBERG expressed his concern and said he's a little bit aghast at this proposal. He asked what is sacred and where do you draw the line. He wanted to know if this bill opens the floodgates to sell everything at Virginia City. **Mr. Tiberi** said no. The bill might have the potential to do that, but the Heritage Commission wouldn't survive if they opened the floodgates and started a mass selling of all of the assets. The people of Montana would hang them! **SEN. KITZENBERG** followed up by stating he saw in **Mr. Tiberi's** presentation that the commission has liquor licenses and does this bill have the potential of selling those licenses, which would then open the doors to casinos. **Mr. Tiberi** remarked on that issue having a long history. They were recently approached by one of their liquor license holders who wanted to add gambling to his establishment. They had a series of public hearings and the liquor control folks at Revenue told the commission that their licenses do not allow gambling. So the issue was put to rest at that point. **SEN. KITZENBERG** wanted to know if the commission would be open to limiting what they're trying to do in this bill to just real property as opposed to the artifacts. **Mr. Tiberi** answered that two government boards responsible to the legislature are appointed to manage this asset. What is being done in this bill is clarification of who the legislature wants to manage these assets ... the Historical Society or the Heritage Preservation Commission. Working together has been difficult because the Historical Society's mission is museum and the Historic Preservation Commission's is museum and business. If this bill passes, the commission is going to be very cautious, even on the real estate side of it. They are not ready to go and pick out all of these artifacts and sell any of them.

SEN. SPRAGUE commented on the Bovey situation and intent. He was an obsessive collector. He asked what **Mr. Tiberi** and the commission has envisioned for selling and/or marketing of the excess items. **Mr. Tiberi** said a decision has not been made. There hasn't been enough research done at this time.

Closing by Sponsor:

SEN. MAHLUM thanked the opponents, proponents and informational witnesses and commented on what a good job they all did. Whatever happens with this bill, he guaranteed that the Montana Heritage Commission will work hand in hand with the director of the Historical Society. A year ago, the commission was offered Reeder's Alley by two brothers who wanted a tax write-off. The commission purchased it for the state of Montana and their offices are there. Any money that would be received from the possible sale of property would go toward fixing up properties in Virginia City. **SEN. MAHLUM** described selling some of the old,

dilapidated trains in Nevada City and using the money to fix up some of the nicer trains in Virginia City. He addressed **SEN. ROUSH** and guaranteed that their curator would work with the Historical Society's curator to determine the value of the boxes and boxes of things. With regard to **SEN. KITZENBERG'S** concerns about casinos at Virginia City, **SEN. MAHLUM** assured him there won't be gambling there. He reiterated the commission's goal of authenticity and working hand-in-hand with their curator and the curator of the Historical Society to keep Virginia City and Nevada City true to history.

ADJOURNMENT

Adjournment: 10:37 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus07aad)